

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION IX**

IN THE MATTER OF:  
PRC Patterson Removal Site  
Patterson, California

Ramos Environmental Services Inc.,  
Respondent

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AGREEMENT FOR THE RECOVERY OF  
RESPONSE COSTS

CERCLA Docket No. 9-2005-0005

Proceeding Under Section 122(h) of the  
Comprehensive Environmental Response,  
Compensation, and Liability Act, as  
amended, 42 U.S.C. § 9622(h)

## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Agreement for the Recovery of Response Costs (the "Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Ramos Environmental Services, Inc. ("RES," or "Respondent") a California corporation. This Agreement provides for the reimbursement of response costs that EPA incurred in oversight of the removal action regarding the PRC Patterson Superfund Removal Site, 13331 Highway 33 in Patterson, Stanislaus County, California (the "Site").

2. This Agreement is entered into under the authority vested in the President of the United States by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Superfund Branch Chiefs pursuant to Regional Delegation 1290.20 (September 29, 1997).

3. EPA has notified the state of California of this action.

4. EPA and RES recognize that this Agreement has been negotiated in good faith and that neither the actions undertaken by RES in response at the Site, in accordance with this Agreement, nor in entering this Agreement shall constitute an admission of any fact, fault, legal issue or liability. RES agrees to comply with and be bound by the terms of this Agreement and further agrees that it will not contest the basis or validity of this Agreement or its terms in proceedings to enforce this Agreement.

5. EPA has incurred response costs at or in connection with the Site. EPA has determined that the total past and projected response costs of the United States at or in connection with the Site exceed \$500,000, excluding interest.

## **II. PARTIES BOUND**

6. This Agreement shall be binding on EPA, and on RES and its successors and assigns. Any change in ownership or corporate or other legal status of RES, including but not limited to, any transfer of assets or real or personal property, shall in no way alter its responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

## **III. DEFINITIONS**

7. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

a. "Agreement" shall mean this Agreement for the Recovery of Response Costs, EPA Docket No. CERCLA 9-2005-0005.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall be the effective date of this Agreement as provided in Section XVI.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, or agencies of the United States.

f. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time that the interest accrues. The rate of interest is subject to change on October 1 of each year.

g. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral.

h. "Parties" shall mean EPA and Chevron USA.

i. "RCRA" shall mean the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act), as amended, 42 U.S.C. §§ 6901, *et seq.*

j. "Removal Action" shall mean all activities to assess, characterize and remove hazardous substances from the Site.

k. "Response Costs" shall mean those costs that EPA incurred from the response action at the Site, as described in Section IV of this Agreement.

l. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

#### **IV. BACKGROUND**

8. The City of Patterson is located approximately two miles south of the Site. There are numerous irrigation canals located in the immediate vicinity of the Site. Several of these canals drain into Del Puerto Creek, which flows within a mile of the Site. Del Puerto Creek flows into the San Joaquin River. The facility commenced operation as a waste oil recycler in the early

1980s, and continued until the then operator abandoned the Site sometime in 1997. On November 18, 1997, EPA initiated an emergency response action to stabilize unsafe and dangerous conditions that presented an endangerment to the public health, welfare, and the environment. EPA provided Site security, upgraded the perimeter fence and berm, and pumped down the liquid level in several storage tanks, which were either overflowing or on the verge of overflowing.

9. EPA identified hazardous substances throughout the Site, specifically within numerous process tanks, storage tanks, filtration equipment, distillation and refining equipment, office trailers, laboratory trailers, and a large warehouse. The tanks and equipment contained varying amounts of oil, sludge, wastewater or mixtures of all three substances. Many of the tanks were observed to be leaking. Two of the large storage tanks had large holes in their roofs. There were more than 1,100 drums containing used oil filters. Sampling confirmed that the large tanks of used and waste oil contained Cadmium, Chromium, Copper, Lead, Mercury and Nickel. The threat of a release of these hazardous substances was exacerbated by the aging and dilapidated condition of the tanks, the lack of a roof on Storage Tank S4, several holes in the roof of Storage Tank S1, a large hole in the roof of Storage Tank S3, seasonal rains, the lack of regular or routine inspection and maintenance, and the fact that the owner and operator had abandoned the Site.

10. EPA issued orders to Chevron Corporation and the Atlantic Richfield Corporation on April 10, 1998, which required the removal of hazardous substances from two large above ground storage tanks associated with the Site. On August 12, 1998, EPA issued Unilateral Administrative Order 98-12 ("UAO 98-12"), which required that, among other things, fifty-three other parties, including RES, conduct a removal action with respect to the waste oil, sludge, and oily wastewater throughout the rest of the Site. An original group of nineteen cooperating parties (the "Patterson Environmental Trust") committed to undertaking the Removal Action required by UAO 98-12, and worked with other parties to complete the response action.

11. EPA resolved the liability of Chevron Corporation, Atlantic Richfield Corporation, the Patterson Environmental Trust and many other parties that cooperated with the Patterson Environmental Trust through subsequent consent agreements, dated respectively December 14, 2001, December 14, 2001, and October 11, 2001. RES did not join these agreements.

12. RES resolved its contribution liability to the Patterson Environmental Trust by a separate agreement. By this agreement, RES resolves its liability at the Site to the EPA.

13. EPA incurred response costs at or in connection with the Site.

#### **V. PAYMENT OF RESPONSE COSTS**

14. Within ten (10) days after the Effective Date, Respondent shall pay to EPA \$70,000.00. Payment shall be made to EPA by check in accordance with current procedures to be provided to RES by EPA, and shall be accompanied by a notice statement identifying the

name and address of the party making payment, the amount of the payment, the Site name, the EPA Region and Site/Spill ID Number (09EG), and the EPA docket number for this action.

15. At the time of payment, Respondent also shall send notice that payment has been made to:

David Wood  
Superfund Accounting (PMD-6)  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Such additional notice shall reference the amount of the payment, the Site ID Number (09EG) and the EPA docket number for this action. EPA shall deposit the total amount to be paid pursuant to this Agreement into the EPA Hazardous Substance Superfund.

## **VI. FAILURE TO COMPLY WITH AGREEMENT**

16. Interest on Late Payments. If Respondent fails to make the payment required by Paragraph 14 by the required due date, Interest shall accrue on the unpaid balance through the date of payment.

17. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 14 are not paid by the required date, Respondent shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 16, \$500.00 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the Site ID (09EG), and the EPA Docket Number for this action. Respondent shall send the check (and any accompanying letter) to:

EPA - Cincinnati Accounting Operations  
Attention: Region 9 Receivables  
P.O. Box 371099M  
Pittsburgh, PA 15251

c. At the time of each payment, Respondent also shall send notice that payment has been made to EPA in accordance with Paragraph 15.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

18. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Respondent's failure to comply with the requirements of this Agreement, if Respondent fails or refuses to comply with the requirements of this Agreement it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Respondent shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

19. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse Respondent from any other obligation required by this Agreement.

#### **VII. COVENANT NOT TO SUE BY EPA**

20. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Respondent pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs, seek penalties regarding Site related requests for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e) or for the response action described in Section IV. This covenant shall take effect on receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Agreement). This covenant not to sue is conditioned on the satisfactory performance by Respondent of its obligations under this Agreement. This covenant not to sue also is conditioned on the veracity and completeness of the information provided to EPA in response to requests for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). If EPA subsequently determines that the information is false or, in any material respect, inaccurate, Respondent shall forfeit all payments made pursuant to this Agreement and this covenant not to sue and the contribution protection in Paragraph 29 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA or the United States's right to pursue any other causes of action arising from Respondent's false or materially inaccurate information. This covenant not to sue extends only to Respondent and does not extend to any other person.

#### **VIII. RESERVATIONS OF RIGHTS BY EPA**

21. EPA reserves, and this Agreement is without prejudice to, all rights against Respondent with respect to all matters not expressly included within the Covenant Not to Sue by

EPA in Paragraph 20. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Respondent with respect to:

- a. liability for failure of Respondent to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

22. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

#### **IX. COVENANT NOT TO SUE BY RESPONDENT**

23. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Response Costs or this Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Response Costs.

24. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

25. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

26. The waiver in Paragraph 25 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

#### **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

27. Except as provided in Paragraph 25 (Non-Exempt De Micromis Waiver), nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. Except as otherwise provided by this Agreement, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

28. EPA and Respondent agree that performance in accordance with this Agreement does not constitute an admission of any liability by Respondent. Respondent does not admit and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section IV of this Agreement.



29. The Parties agree that Respondent is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Response Costs and the response actions described in Section IV.

30. Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Respondent shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

31. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based on any contention that the claims raised in the subsequent proceeding were or should have been resolved through this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VII.

## **XI. ACCESS TO INFORMATION**

32. Respondent shall provide to EPA, on request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the response action. Respondent also shall make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the response action.

33. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

34. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Agreement shall be withheld on the grounds that they are privileged.

35. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## **XII. RECORD RETENTION**

36. Until five (5) years after the Effective Date, Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the response action or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Respondent also shall instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the response action consistent with this Paragraph.

37. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, on request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Agreement shall be withheld on the grounds that they are privileged.

38. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the state of California and that it has fully complied with any and all EPA requests for information pursuant

to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

### **XIII NOTICES AND SUBMISSIONS**

39. Whenever, under the terms of this Agreement notice is required to be given or a document is required to be sent by one Party to another, such notice shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Excepting additional notices as may be required in Paragraphs 15 and 17, written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and the Respondent.

#### **As to EPA:**

John Jaros  
EPA, Region IX (SFD 9)  
75 Hawthorne Street  
San Francisco, California 94105

#### **As to Respondent:**

xxx  
xxx  
xxx

### **XIV. INTEGRATION**

40. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

### **XV. PUBLIC COMMENT**

41. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations that indicate that this Agreement is inappropriate, improper or inadequate.

## **XVI. EFFECTIVE DATE**

42. The effective date of this Agreement shall be the date on which EPA issues written notice that the public comment period pursuant to Section XV has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

Each undersigned representative of the Parties is authorized to enter into the terms and conditions of this Agreement and to bind the parties to this document.

[Signatures on subsequent pages.]

It is so ORDERED and Agreed this 26<sup>th</sup> day of August, 2005.

BY: James C. Hansen  
for Kay Lawrence  
Acting Branch Chief  
Response, Planning and Assessment Branch  
U.S. Environmental Protection Agency, Region 9

DATE: August 26, 2005

[Respondent's signature on following page.]

For Respondent, RAMOS ENVIRONMENTAL SERVICES, INC.:

By



Title

President

Date

3/17/05